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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE AGUSTIN SANCHEZ,
JR.,

Defendant and Appellant.

2d Crim. No. B290037
(Super. Ct. No. 2016012481)
(Ventura County)

Jose Agustin Sanchez, Jr., appeals from the judgment after a jury convicted him of seven counts: assaulting a peace officer (Pen. Code,¹ § 245, subd. (c); count 1), resisting an executive officer (§ 69, subd. (a); counts 2, 3 & 6), possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); count 4), possession of drug paraphernalia (Health & Saf. Code, § 11364, subd. (a); count 5), and petty theft (§ 484, subd. (a);

¹ Further unspecified statutory references are to the Penal Code.

count 7). The trial court found true the allegation that Sanchez was out on bail when he committed count 6 (resisting an executive officer). (§ 12022.1, subd. (b).) The court sentenced him to a total of six years eight months in state prison (four years for count 1, eight months consecutive for count 6, and two years for the out-on-bail enhancement). The trial court stayed the sentence for count 3 pursuant to section 654. Each of the other counts (counts 2, 4, 5 & 7) were misdemeanors, and the court imposed a 30-day concurrent sentence for each count.

Sanchez contends that the trial court erred when it (1) denied his motion to suppress and (2) imposed certain fines, fees, and assessments without an ability to pay hearing. He also requests that we review transcripts from an in camera *Pitchess*² proceeding to determine whether the court improperly withheld discoverable materials. We affirm.

FACTS AND PROCEDURAL HISTORY

In March 2016, Ventura County Sherriff's Deputy Beau Rodriguez went to the Oxnard parole office to arrest Christian Perez. From a background check, Rodriguez knew that Perez was on parole for armed robbery. Rodriguez also learned from police reports that Perez had been involved in a dispute at a gas station where he was armed with a firearm, and that in a separate incident, he had threatened his girlfriend that he was "out looking for [her and her relatives] with firearms" after she reported him for setting car her on fire. Based on Perez's background with firearms, Rodriguez believed that the "safest way" to arrest Perez was at the parole department office, because he would not likely enter the office with a firearm.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

After parole representative confirmed Perez was in the office, Rodriguez and Deputy Patrick Hawthorne went there. Rodriguez noticed Perez's car in the parking lot. Sanchez was sitting in the front passenger seat. Because Rodriguez was aware that Perez was on parole and subject to search terms, he decided to search the car while Perez was inside the office. He testified that he "believed that there was a strong possibility that there would be a firearm inside [the] vehicle."

Rodriguez approached the car and identified himself to Sanchez. Rodriguez asked Sanchez for his name and the identity of the car's owner. Sanchez identified himself and said the car belonged to Perez. During this interaction, Rodriguez noticed that Sanchez looked "nervous," avoided eye contact, and kept his right hand "buried" inside his shorts pocket.

Rodriguez asked Sanchez to step out of the car. Sanchez complied. Rodriguez told him that he was going to pat him down for weapons, and Sanchez responded, "okay." Rodriguez testified that he conducted the pat down because he knew that Perez had an "extensive history of being around firearms" and believed that Sanchez might have access to a firearm in the car; he also knew that parolees often have their associates carry firearms for them; and Sanchez looked nervous and kept his hands in his shorts pocket. During the pat down, Rodriguez "felt a pipe object in his pocket." Rodriguez asked if it was a methamphetamine pipe, and Sanchez responded "yes."

After removing the methamphetamine pipe from Sanchez's pocket, Rodriguez handcuffed Sanchez and sat him down on the curb. Rodriguez conducted a search of the car and found methamphetamine. He then searched Sanchez and found methamphetamine.

At some point, Sanchez stood up with his hands freed from the handcuffs and ran away. When Hawthorne chased Sanchez and grabbed his clothes, Sanchez struck Hawthorne in the head. Sanchez continued to punch and kick Hawthorne and physically resisted Rodriguez. Sanchez continued to resist until another officer assisted with the arrest.

Sanchez filed a motion to suppress on the ground that the pat down was unreasonable under the Fourth Amendment. The trial court denied the motion. It concluded that there were “specific and articulable facts” that supported the pat down for weapons. It found that “it was completely objectively and subjectively reasonable for [Deputy] Rodriguez to say . . . if this person is going [to be] standing here while I search this car, I want to pat him down to make sure that me and my partner were safe.”

After the jury convicted Sanchez, the trial court sentenced Sanchez to six years eight months in state prison. At sentencing, the trial court imposed \$280 for court security fees (\$40 for each count) and \$210 for criminal conviction assessments (\$30 for each count). (§ 1465.8; Gov. Code, § 70373.) The court ordered Sanchez to pay a \$1,500 restitution fine. (§ 1202.4, subd. (b).) The court stated the restitution fine may be “deduct[ed] from the wages and trust account deposits.”

DISCUSSION

Motion to Suppress

Sanchez contends that counts 4 and 5 (the drug offenses) must be reversed because the evidence was obtained as a result of an illegal pat down, and counts 2 and 3 (resisting arrest) must be reversed and count 1 (assaulting a peace officer offense) reduced to a misdemeanor because the deputies were not

performing their lawful duties when they patted him down. We disagree.

The Fourth Amendment protects “against unreasonable searches and seizures” by the police. (U.S. Const., 4th Amend.) Evidence obtained in violation of this guarantee may not be used in a subsequent prosecution. (*Mapp v. Ohio* (1961) 367 U.S. 643, 655.) On review of a ruling denying a motion to suppress, we view the facts most favorably to the prosecution and uphold the trial court’s factual findings if supported by substantial evidence. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) We decide independently whether a search or seizure was reasonable under the Fourth Amendment. (*People v. Weaver* (2001) 26 Cal.4th 876, 924.)

An officer may conduct a limited search for weapons without violating the Fourth Amendment when “specific and articulable facts . . . together with reasonable inferences from those facts” support a suspicion that a suspect is “armed and dangerous.” (*Terry v. Ohio* (1968) 392 U.S. 1, 21, 27.) “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that [their] safety or that of others was in danger.” (*Id.* at p. 27.) Determining whether an officer has reasonable suspicion that an individual is armed and dangerous requires an independent review of the totality of the circumstances. (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

Based on the totality of circumstances, Rodriguez had reasonable suspicion to pat Sanchez down for weapons. Rodriguez knew that Perez was a parolee with an “extensive history of being around firearms” and that firearms could be

inside the car. Sanchez was sitting in his car. It was reasonable for Rodriguez to believe that Sanchez had access to any firearms inside the car. It was also reasonable for Rodriguez to believe that Sanchez could have been carrying firearms for Perez because parolees often have their associates carry firearms for them. Rodriguez's suspicion was further supported by his observation of Sanchez, who looked nervous, avoided eye contact, and had his hands "buried" inside his shorts pocket. Moreover, the pat down was justified to ensure that Sanchez would not be a threat to the deputies' safety during a search of Perez's car. (See *In re H.M.* (2008) 167 Cal.App.4th 136, 143 [an officer has an "immediate interest in taking steps to ensure that the person stopped 'is not armed with a weapon that could unexpectedly and fatally be used' against the officer"].)

Sanchez cites to *People v. Sandoval* (2008) 163 Cal.App.4th 205 and argues that Rodriguez had no "individualized suspicion" that he was armed and dangerous. In *Sandoval*, officers went to a residence belonging to a probationer and they encountered Sandoval, who was sitting on the porch steps. (*Id.* at p. 208.) After officers entered the residence and "cleared the home" (*ibid.*), an officer patted Sandoval down for weapons, despite having "no reason to believe he was armed or committing a crime" (*id.* at p. 209). Unlike the facts in *Sandoval*, here there were specific and articulable facts to support the belief that Sanchez was possibly armed and dangerous. Moreover, the pat down was performed to ensure officer safety before, not after, the search.

Fine, Fees, and Assessments

Sanchez contends the court security fees and criminal conviction assessments (§ 1465.8; Gov. Code, § 70373) must be

reversed and the restitution fine (§ 1202.4) stayed because they were imposed without determining his ability to pay them. (*People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1172-1173 (*Dueñas*)).) The Attorney General argues that Sanchez forfeited these claims. We agree that Sanchez forfeited his claims on the restitution fine, but did not forfeit his claims to the court security fees and criminal conviction assessments. However, we conclude that remand is unnecessary.

1. Restitution Fine

Sanchez's failure to object to the \$1,500 restitution fine forfeited his claim on appeal. Under section 1202.4, subdivision (d), if the restitution fine is in excess of the minimum fine, "the court shall consider any relevant factors, including, . . . the defendant's inability to pay. . . . A defendant shall bear the burden of demonstrating his or her inability to pay."

Here, the court imposed a restitution fine above the minimum amount. In so doing, the court considered relevant factors such as Sanchez's ability to pay and concluded the fine can be "deduct[ed] from the wages and trust account deposits." Because Sanchez did not object, he forfeited this claim. (See *People v. Avila* (2009) 46 Cal.4th 680, 729 [forfeiture where the defendant did not object to a restitution fine above the statutory minimum].)

2. Fees and Assessments

We reach a different conclusion regarding forfeiture of the \$280 court security fees and the \$210 criminal conviction assessments. At the time the fees and assessments were imposed, *Dueñas, supra*, 30 Cal.App.5th 1157, had not been decided. In *Dueñas*, the Court of Appeal held that due process requires a trial court to conduct an ability to pay hearing before

imposing court facilities fees (§ 1465.8) and criminal conviction assessments (Gov. Code, § 70373). Because no California court prior to *Dueñas* held it was unconstitutional to impose these fees and assessments without an ability to pay determination, Sanchez did not forfeit this claim. (*People v. Castellano* (2019) 33 Cal.App.5th 485, 490-491 (*Castellano*).)

But remand is unnecessary. The trial court considered Sanchez's ability to pay fines and fees, such as a \$600 drug program fee (Health & Saf. Code, § 11372.7) and a \$1,500 restitution fine. It strains credulity to believe that the court would now strike \$490 in formerly mandatory fees, when it imposed discretionary fines and fees in a substantially greater amount at the same time it imposed the fees now objected to. Moreover, Sanchez did not object to the imposition of any fines and fees based on an inability to pay. "[H]e surely would not complain on similar grounds regarding an additional" \$490 in fees. (*People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1033.) Remand would be an idle act.

Pitchess Review

Sanchez requests that we independently review the transcript of the in camera *Pitchess* proceeding to determine whether the trial court improperly withheld discoverable materials pertaining to Deputies Rodriguez and Hawthorne, and another officer (collectively officers). We have done so and conclude no further disclosure was required.

Upon a showing of good cause, a defendant has the right to discover information in a law enforcement officer's personnel file if it is relevant to the proceedings against them. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226-1227.) Once the defendant makes the required showing, the custodian of records

must present to the trial court all potentially relevant documents for in camera review. (*Id.* at pp. 1228-1229.) During the review, the custodian should state which documents were not presented to the court and why they were deemed irrelevant to the defendant's request. (*Id.* at p. 1229.) The court should make a record of the documents it examined and state whether they should be disclosed. (*Id.* at pp. 1229-1232.) We review the court's ruling for abuse of discretion. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.)

The trial court did not abuse its discretion. The court granted Sanchez's *Pitchess* motion requesting information in the officers' personnel files relating to instances of excessive force or dishonesty. The court conducted an in camera review and ordered discovery of one relevant item pertaining to one of the officers. We have reviewed the transcript of the in camera proceedings, and are satisfied that the court complied with the procedures set forth in *Mooc*. No additional disclosure is required.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michele M. Castillo, Judge
Superior Court County of Ventura

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